

# **EXHIBIT 1**

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**From:** Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>  
**Sent:** Friday, April 23, 2021 11:30 AM  
**To:** Cooney, Trevor J.  
**Cc:** Gilly, Richard P.; Robert K. Jain; Mark Halderman; Franchetti, Nicholas T.; Sherlock, Kate A.  
**Subject:** RE: [EXT MAIL] Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)  
  
**Sensitivity:** Confidential

Hi Trevor,

We'll need to check with our client on whether we'll agree to a stay. That being said, we should proceed with the meet and confer as scheduled since we are under a tight timeframe to complete it, and would still need to hold it if we don't agree.

Thanks,  
Jeff

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**From:** Cooney, Trevor J. <tcooney@archerlaw.com>  
**Sent:** Friday, April 23, 2021 8:11 AM  
**To:** Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>  
**Cc:** Gilly, Richard P. <rgilly@archerlaw.com>; Robert K. Jain <rjain@hopkinscarley.com>; Mark Halderman <MHalderman@atllp.com>; Franchetti, Nicholas T. <nfranchetti@archerlaw.com>; Sherlock, Kate A. <ksherlock@archerlaw.com>  
**Subject:** RE: [EXT MAIL] Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)  
**Sensitivity:** Confidential

Jeff,

We just learned that the USPTO has granted our client's request for *ex parte* reexamination (see attached). Accordingly, we intend to seek a stay of the litigation until the reexamination is complete. Please advise if your client will consent to/join in such a motion.

In light of the foregoing, please let us know if you still want to proceed with the meet and confer later today. Thanks.

**Trevor J. Cooney, Esq.**

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---

**From:** Jeffrey M. Ratinoff <[jratinoff@hopkinscarley.com](mailto:jratinoff@hopkinscarley.com)>

**Sent:** Wednesday, April 21, 2021 1:13 PM

**To:** Cooney, Trevor J. <[tcooney@archerlaw.com](mailto:tcooney@archerlaw.com)>; Sherlock, Kate A. <[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)>

**Cc:** Gilly, Richard P. <[rgilly@archerlaw.com](mailto:rgilly@archerlaw.com)>; Robert K. Jain <[rjain@hopkinscarley.com](mailto:rjain@hopkinscarley.com)>; Mark Halderman <[MHalderman@atllp.com](mailto:MHalderman@atllp.com)>; Franchetti, Nicholas T. <[nfranchetti@archerlaw.com](mailto:nfranchetti@archerlaw.com)>

**Subject:** RE: [EXT MAIL] Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)

**Sensitivity:** Confidential

Hi Trevor,

Thanks for reaching out. Let's schedule a call for 1:30pm EDT/10:30 am PDT on Friday.

Regards,

Jeff

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**From:** Cooney, Trevor J. <[tcooney@archerlaw.com](mailto:tcooney@archerlaw.com)>

**Sent:** Wednesday, April 21, 2021 9:26 AM

**To:** Jeffrey M. Ratinoff <[jratinoff@hopkinscarley.com](mailto:jratinoff@hopkinscarley.com)>; Sherlock, Kate A. <[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)>

**Cc:** Gilly, Richard P. <[rgilly@archerlaw.com](mailto:rgilly@archerlaw.com)>; Robert K. Jain <[rjain@hopkinscarley.com](mailto:rjain@hopkinscarley.com)>; Mark Halderman <[MHalderman@atllp.com](mailto:MHalderman@atllp.com)>; Franchetti, Nicholas T. <[nfranchetti@archerlaw.com](mailto:nfranchetti@archerlaw.com)>

**Subject:** RE: [EXT MAIL] Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)

**Sensitivity:** Confidential

Jeff,

We have not spoken yet, but I will be joining this case as counsel for Defendants (along with Richard and Kate). I understand you are requesting a meet and confer on the issues outlined in your email below. I'm available this Friday until 2pm. Please let me know if that works for you. Thanks.

Trevor J. Cooney, Esq.

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-----Original Message-----

From: Jeffrey M. Ratinoff <[jratinoff@hopkinscarley.com](mailto:jratinoff@hopkinscarley.com)>

Sent: Thursday, April 15, 2021 8:32 PM

To: Sherlock, Kate A. <[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)>

Cc: Gilly, Richard P. <[rgilly@archerlaw.com](mailto:rgilly@archerlaw.com)>; Robert K. Jain <[rjain@hopkinscarley.com](mailto:rjain@hopkinscarley.com)>; Mark Halderman <[MHalderman@atllp.com](mailto:MHalderman@atllp.com)>

Subject: [EXT MAIL] RE: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)

Sensitivity: Confidential

Hi Kate,

We've had a chance to review Defendants' Answer and Counterclaim, and believe that their defamation and disparagement claims are subject to dismissal pursuant to Rule 12(b)(6) as follows:

\* The statements in question are non-actionable opinions for which all the necessary facts are disclosed for the reader to make their own determination as to whether the accused product is capable of automatic function. *Remick v. Manfredy*, 238 F.3d 248, 261 (3d Cir. 2001) (under Pennsylvania law "an opinion cannot be defamatory unless it 'may reasonably be understood to imply the existence of undisclosed defamatory facts justifying the opinion.'" (citation omitted); accord *Bealer v. Mutual Fire, Marine and Inland Ins. Co.*, 2005 WL 1819971, at \*6 ([E.D.Pa.](#) Aug. 1, 2005) (recognizing "[e]xpressions of opinion are not actionable unless they imply undisclosed, false and defamatory facts").

\* Under Pennsylvania law, out-of-court statements made by parties to a proceeding that are a fair and accurate report of the pleadings filed are subject to a qualified privilege. See *Doe v. Kohn Nast & Graf, P.C.*, 866 F.Supp. 190, 194 (E.D. Pa. 1994); accord *First Lehigh Bank v. Cowen*, 700 A.2d 498, 502 (Pa.Super.Ct.1997) ("under Pennsylvania law, the fair comment privilege does apply to reports of pleadings even in the absence of judicial actions upon the pleadings"). As reflected by Exhibit A to the Counterclaim, the allegedly defamatory statements were in direct response to questions about the allegations in the Complaint filed in this action on November 13, 2020: "Franklin has filed suit against ITF as mentioned above. You can view and download the complaint on Bob's website. [] From a quick reading it looks like Franklin is claiming ITF is violating one of Franklin's binary trigger patents (apparently they have 4?) and also claiming that ITF is selling an 'illegal machine gun.'" [Post by "waynelte" on 11/19/2020 at 8:15:53 PM EDT]. The allegedly defamatory statements following these questions explaining Plaintiffs' allegations thus fall squarely within the fair reporting/comment privilege. As a result, Defendants' defamation and disparagement claims fail as a matter of law.

\* Defendants also cannot maintain a defamation per se claim as a matter of law on any of the statements identified in the Counterclaim because they were about the ITF Binary trigger, not about Defendants. See *Mallory v. S & S Publishers*, 168 F. Supp. 3d 760, 774 (E.D. Pa. 2016) (recognizing that "[a] claim for commercial disparagement protects economic interests related to the marketability of goods,' whereas 'defamation involves the reputation of persons, not products.'" (internal citation omitted). In this regard, Defendants claim for defamation is nullified by the first substantive paragraph of that claim wherein they allege "Plaintiffs have made false and per se defamatory statements regarding the legality of the ITF Trigger...." Doc No. 14, p. 16 at ¶ 5.

\* Defendants' commercial disparagement claim is otherwise subject to dismissal because it fails to allege facts with the required specificity to plausibly establishing pecuniary loss. See *Universal Elec. Corp. v. Baldwin*, No. 2:17-CV-00842, 2018 WL 3707423, at \*15 (W.D. Pa. Aug. 3, 2018) (recognizing in dismissing commercial disparagement claim that "[t]he defining hallmark of a trade disparagement claim is the requirement that a plaintiff plead pecuniary loss with considerable specificity"); *KDH Elec. Sys. v. Curtis Tech. Ltd.*, 826 F.Supp.2d 782, 806 (E.D. Pa. 2011) (dismissing commercial disparagement claim because conclusory allegation that counter-defendants caused pecuniary loss did not satisfy counterclaimant's burden of establishing general

diminution in sales or specific lost sales).

We also note there are several affirmative defenses in Defendants' answer that are subject to a motion to strike pursuant to Rule 12(f). In this regard, defenses that are "bare-bones" recitals without any factual or logical connection to the underlying action should be stricken. See U.S. Bank Nat'l Ass'n v. Gerber, 380 F.Supp.3d 429, 439 (M.D. Pa. 2018) (holding that affirmative defense must provide fair notice, which at minimum, consists of a concise "statement of the grounds for asserting an affirmative defense that demonstrates a logical relationship to the lawsuit"). Defendants' Fourth Affirmative Defense (laches), Fifth Affirmative Defenses (unclean hands) and Seventh Affirmative Defense (equitable estoppel) do not provide fair notice to Plaintiffs as they are mere threadbare recitals of these equitable defenses. Accordingly, we ask that Defendants agree to amend them and provide the factual context for each defense, or withdraw them.

Finally, Defendants' Third Affirmative Defense based on the doctrine of inequitable conduct falls well short of what is required to assert such a defense. It is well established that in patent cases, inequitable conduct must be pled with particularity pursuant to Federal Rule of Civil Procedure 9(b). Exergen Corp. v. Wal-Mart Stores, Inc., 575 F.3d 1312, 1326 (Fed. Cir. 2009) ("[W]e hold that in pleading inequitable conduct in patent cases, Rule 9(b) requires identification of the specific who, what, when, where, and how of the material misrepresentation or omission committed before the PTO.") Defendants make no effort to allege facts establishing each element necessary to establish an inequitable conduct defense, let alone any that meet this heightened pleading requirement. Accordingly, we ask that Defendants either amend this defense or withdraw it.

Assuming that Defendants are not agreeable to dismissing their defamation and disparagement claims, as well as amending the aforementioned affirmative defenses to avoid a motion to dismiss and strike, please provide your availability next week to meet and confer as required by the Court's guidelines.

Regards,  
Jeff

From: Jeffrey M. Ratinoff  
Sent: Friday, April 9, 2021 1:47 PM  
To: 'Sherlock, Kate A.' <[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)>  
Cc: Gilly, Richard P. <[rgilly@archerlaw.com](mailto:rgilly@archerlaw.com)>; Robert K. Jain <[rjain@hopkinscarley.com](mailto:rjain@hopkinscarley.com)>; Mark Halderman <[MHalderman@atlpl.com](mailto:MHalderman@atlpl.com)>  
Subject: RE: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)  
Sensitivity: Confidential

Hi Kate,

Thank you for your courtesy, we were already aware of the request for re-examination. We look forward to seeing your client's answer and scheduling a Rule 26(f) conference after that. We'll also be happy to discuss settlement at that time. Have a good weekend.

Regards,  
Jeff

From: Sherlock, Kate A. <[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)<<mailto:ksherlock@archerlaw.com>>>  
Sent: Friday, April 9, 2021 12:41 PM  
To: Jeffrey M. Ratinoft <[jratinoft@hopkinscarley.com](mailto:jratinoft@hopkinscarley.com)<<mailto:jratinoft@hopkinscarley.com>>>  
Cc: Gilly, Richard P. <[rgilly@archerlaw.com](mailto:rgilly@archerlaw.com)<<mailto:rgilly@archerlaw.com>>>; Robert K. Jain <[rjain@hopkinscarley.com](mailto:rjain@hopkinscarley.com)<<mailto:rjain@hopkinscarley.com>>>; Mark Halderman <[MHalderman@atllp.com](mailto:MHalderman@atllp.com)<<mailto:MHalderman@atllp.com>>>  
Subject: RE: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)  
Sensitivity: Confidential

FRE 408

Jeff,

While we disagree with your position to cancel our settlement call, we can reschedule for next week if you wish.

As a courtesy, however, we want to inform you that we filed a request for a re-examination of the '461 patent and served copies upon USPTO counsel. If you wish to discuss our abandoning such request in the context of a settlement, we await your response.

Thanks,  
Kate

Kate A. Sherlock, Esq.

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-----Original Message-----

From: Jeffrey M. Ratinoft <[jratinoft@hopkinscarley.com](mailto:jratinoft@hopkinscarley.com)<<mailto:jratinoft@hopkinscarley.com>>>  
Sent: Wednesday, April 7, 2021 10:50 AM

To: Sherlock, Kate A. <[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)<<mailto:ksherlock@archerlaw.com>>>  
Cc: Gilly, Richard P. <[rgilly@archerlaw.com](mailto:rgilly@archerlaw.com)<<mailto:rgilly@archerlaw.com>>>; Robert K. Jain  
<[rjain@hopkinscarley.com](mailto:rjain@hopkinscarley.com)<<mailto:rjain@hopkinscarley.com>>>; Mark Halderman  
<[MHalderman@atllp.com](mailto:MHalderman@atllp.com)<<mailto:MHalderman@atllp.com>>>  
Subject: [EXT MAIL] Re: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense,  
E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)  
Sensitivity: Confidential

Hi Kate,

I note in the quoted passage it references discussing the possibility of promptly settling the case. Since Defendants (incorrectly) believe that the filing of their answer should happen before a Rule 26(f) conference, then so should any further settlement discussions. So, let's reschedule our call after April 12th.

Thanks,  
Jeff

Sent from my iPad

On Apr 6, 2021, at 6:18 PM, Sherlock, Kate A.  
<[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)<<mailto:ksherlock@archerlaw.com>>> wrote:

Jeff,

Pursuant to Fed. R. Civ. P. 26(f), in conferring, the parties "must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case" and the discovery plan must describe the subjects on which discovery may be needed. We cannot fulfill those requirements before filing our answer and affirmative defenses and/or counterclaims, if any.

I'll circulate a dial-in for our call tomorrow.

Thanks,  
Kate

Kate A. Sherlock, Esq.

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[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)<<mailto:ksherlock@archerlaw.com>>  
[www.archerlaw.com](http://www.archerlaw.com)<<http://www.archerlaw.com>><<http://www.archerlaw.com>><<http://www.archerlaw.com>>>

[[https://www.archerlaw.com/wp-content/uploads/2018/05/Archer\\_Logo\\_168x46.jpg](https://www.archerlaw.com/wp-content/uploads/2018/05/Archer_Logo_168x46.jpg)]

From: Jeffrey M. Ratinoff <[jratinoff@hopkinscarley.com](mailto:jratinoff@hopkinscarley.com)<<mailto:jratinoff@hopkinscarley.com>>>  
Sent: Monday, April 5, 2021 6:54 PM  
To: Sherlock, Kate A. <[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)<<mailto:ksherlock@archerlaw.com>>>

Cc: Gilly, Richard P. <[rgilly@archerlaw.com](mailto:rgilly@archerlaw.com)<<mailto:rgilly@archerlaw.com>>>; Robert K. Jain <[rjain@hopkinscarley.com](mailto:rjain@hopkinscarley.com)<<mailto:rjain@hopkinscarley.com>>>; Mark Halderman <[MHalderman@atllp.com](mailto:MHalderman@atllp.com)<<mailto:MHalderman@atllp.com>>>  
Subject: [EXT MAIL] RE: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)  
Sensitivity: Confidential

Hi Kate,

Thank you for your email. As mentioned in my prior email, the Judge's Guidelines for Counsel indicate that a Rule 26(f) conference should "take place as early in the case as possible" and that "[o]utstanding motions will not excuse the requirements of holding the meeting and submitting the proposed discovery plan." Thus, we'd appreciate an explanation as to why Defendants believe a Rule 26(f) conference would be premature before they file an answer.

As for settlement, I am happy to schedule a call for Wednesday at 11 am PDT/ 2 pm EDT. Unless Defendants' position has changed, however, I am not sure how productive it will be at this point.

Thanks,  
Jeff

From: Sherlock, Kate A.  
<[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)<<mailto:ksherlock@archerlaw.com><<mailto:ksherlock@archerlaw.com%3cmailto:ksherlock@archerlaw.com>>>>  
Sent: Monday, April 5, 2021 1:51 PM  
To: Jeffrey M. Ratinoft  
<[jratinoft@hopkinscarley.com](mailto:jratinoft@hopkinscarley.com)<<mailto:jratinoft@hopkinscarley.com><<mailto:jratinoft@hopkinscarley.com%3cmailto:jratinoft@hopkinscarley.com>>>>  
Cc: Gilly, Richard P.  
<[rgilly@archerlaw.com](mailto:rgilly@archerlaw.com)<<mailto:rgilly@archerlaw.com><<mailto:rgilly@archerlaw.com%3cmailto:rgilly@archerlaw.com>>>>; Robert K. Jain <[rjain@hopkinscarley.com](mailto:rjain@hopkinscarley.com)<<mailto:rjain@hopkinscarley.com><<mailto:rjain@hopkinscarley.com%3cmailto:rjain@hopkinscarley.com>>>>; Mark Halderman <[MHalderman@atllp.com](mailto:MHalderman@atllp.com)<<mailto:MHalderman@atllp.com><<mailto:MHalderman@atllp.com%3cmailto:MHalderman@atllp.com>>>>  
Subject: RE: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)  
Sensitivity: Confidential

Jeff,

I hope you had a nice weekend. We think the 26(f) conference is premature at this point, especially in light of the Court's order directing Defendants to file an answer by April 12. However, we would like to set up a call to discuss settlement. We are free on Wednesday and Thursday at 2 pm EST. Do either of those times work for you?

Thanks,  
Kate



Kate A. Sherlock, Esq.

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[www.archerlaw.com](http://www.archerlaw.com)<<http://www.archerlaw.com>><<http://www.archerlaw.com>/>

[[https://www.archerlaw.com/wp-content/uploads/2018/05/Archer\\_Logo\\_168x46.jpg](https://www.archerlaw.com/wp-content/uploads/2018/05/Archer_Logo_168x46.jpg)]

From: Sherlock, Kate A.

Sent: Thursday, April 1, 2021 3:50 PM

To: 'Jeffrey M. Ratinoff'

<[jratinoff@hopkinscarley.com](mailto:jratinoff@hopkinscarley.com)<<mailto:jratinoff@hopkinscarley.com><<mailto:jratinoff@hopkinscarley.com>%3c<mailto:jratinoff@hopkinscarley.com>>>>

Cc: Gilly, Richard P.

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Subject: RE: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)

Sensitivity: Confidential

Hi Jeff,

Thanks for your email. We'll get back to you on Monday regarding the Rule 26(f) conference. Have a nice weekend.

Kate

From: Jeffrey M. Ratinoff

<[jratinoff@hopkinscarley.com](mailto:jratinoff@hopkinscarley.com)<<mailto:jratinoff@hopkinscarley.com><<mailto:jratinoff@hopkinscarley.com>%3c<mailto:jratinoff@hopkinscarley.com>>>>

Sent: Wednesday, March 31, 2021 8:52 PM

To: Sherlock, Kate A.

<[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)<<mailto:ksherlock@archerlaw.com><<mailto:ksherlock@archerlaw.com>%3c<mailto:ksherlock@archerlaw.com>>>>

Cc: Gilly, Richard P.

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Subject: [EXT MAIL] RE: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)

Sensitivity: Confidential

Hi Kate,

In light of the Court's order on Defendants' motion to dismiss, I wanted to follow up on scheduling a Rule 26(f) conference for early next week. Please let me know your availability.

Thanks,  
Jeff

From: Jeffrey M. Ratino

Sent: Friday, March 19, 2021 9:15 AM

To: 'Sherlock, Kate A.'

[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)<<mailto:ksherlock@archerlaw.com><<mailto:ksherlock@archerlaw.com>%3cmailto:ksherlock@archerlaw.com>>>

Cc: Gilly, Richard P.

[rgilly@archerlaw.com](mailto:rgilly@archerlaw.com)<<mailto:rgilly@archerlaw.com><<mailto:rgilly@archerlaw.com>%3cmailto:rgilly@archerlaw.com>>>; Robert K. Jain

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Subject: RE: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)

Sensitivity: Confidential

Hi Kate,

The date was based on being 21 days before the deadline for the court to issue a scheduling order per FRCP 16(b). In any event, Judge Kenney's guidelines state that Rule 26(f) conference should occur "as early in the case as possible." So, I believe we should schedule one in the next week or so, which would be consistent with that directive.

Thanks,  
Jeff

From: Sherlock, Kate A.

[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)<<mailto:ksherlock@archerlaw.com><<mailto:ksherlock@archerlaw.com>%3cmailto:ksherlock@archerlaw.com>>>

Sent: Thursday, March 18, 2021 6:16 PM

To: Jeffrey M. Ratino

[jratino@hopkinscarley.com](mailto:jratino@hopkinscarley.com)<<mailto:jratino@hopkinscarley.com><<mailto:jratino@hopkinscarley.com>%3cmailto:jratino@hopkinscarley.com>>>

Cc: Gilly, Richard P.

[rgilly@archerlaw.com](mailto:rgilly@archerlaw.com)<<mailto:rgilly@archerlaw.com><<mailto:rgilly@archerlaw.com>%3cmailto:rgilly@archerlaw.com>>>; Robert K. Jain

[rjain@hopkinscarley.com](mailto:rjain@hopkinscarley.com)<<mailto:rjain@hopkinscarley.com><<mailto:rjain@hopkinscarley.com>%3cmailto:rjain@hopkinscarley.com>>>; Mark Halderman

[MHalderman@atllp.com](mailto:MHalderman@atllp.com)<<mailto:MHalderman@atllp.com><<mailto:MHalderman@atllp.com>%3cmailto:MHalderman@atllp.com>>>

Subject: RE: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil

Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)

Sensitivity: Confidential

Hi Jeff,

Thanks for letting us know that Chris is no longer with Hopkins & Carley. Regarding the Rule 26(f) conference, Judge Kenney's preferences state that the Parties shall hold a Rule 26(f) conference no later than twenty-one days before the scheduled Rule 16 conference. Currently, there is no scheduled Rule 16 conference. May I ask how you calculated the 3/23 deadline?

Thanks,  
Kate

Kate A. Sherlock, Esq.

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[www.archerlaw.com](http://www.archerlaw.com)<<http://www.archerlaw.com>><<http://www.archerlaw.com>>

[[https://www.archerlaw.com/wp-content/uploads/2018/05/Archer\\_Logo\\_168x46.jpg](https://www.archerlaw.com/wp-content/uploads/2018/05/Archer_Logo_168x46.jpg)]

From: Jeffrey M. Ratino

<[jratino@hopkinscarley.com](mailto:jratino@hopkinscarley.com)<<mailto:jratino@hopkinscarley.com><<mailto:jratino@hopkinscarley.com>%3c<mailto:jratino@hopkinscarley.com>>>>

Sent: Thursday, March 18, 2021 5:06 PM

To: Sherlock, Kate A.

<[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)<<mailto:ksherlock@archerlaw.com><<mailto:ksherlock@archerlaw.com>%3c<mailto:ksherlock@archerlaw.com>>>>

Cc: Gilly, Richard P.

<[rgilly@archerlaw.com](mailto:rgilly@archerlaw.com)<<mailto:rgilly@archerlaw.com><<mailto:rgilly@archerlaw.com>%3c<mailto:rgilly@archerlaw.com>>>>

>>>; Robert K. Jain  
<[rjain@hopkinscarley.com](mailto:rjain@hopkinscarley.com)<<mailto:rjain@hopkinscarley.com><<mailto:rjain@hopkinscarley.com>%3c<mailto:rjain@hopkinscarley.com>>>>

>>>; Mark Halderman  
<[MHalderman@atllp.com](mailto:MHalderman@atllp.com)<<mailto:MHalderman@atllp.com><<mailto:MHalderman@atllp.com>%3c<mailto:MHalderman@atllp.com>>>>

Subject: [EXT MAIL] RE: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense,  
E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)

Sensitivity: Confidential

Hi Kate,

I just wanted to let you know that Chris Hohn is no longer with Hopkins & Carley, and that Robert Jain from my office will now be working on the case. Also, I believe there is a 3/23 deadline for the parties to hold a Rule 26(f) conference. Please let me know if you are available either Monday or Tuesday to hold that conference unless you have a different understanding of the deadline.

Thanks,  
Jeff

From: Sherlock, Kate A.

[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)<<mailto:ksherlock@archerlaw.com><<mailto:ksherlock@archerlaw.com>%3c<mailto:ksherlock@archerlaw.com>>>>>>>

Sent: Tuesday, March 2, 2021 6:12 PM

To: Christopher Hohn

[chohn@hopkinscarley.com](mailto:chohn@hopkinscarley.com)<<mailto:chohn@hopkinscarley.com><<mailto:chohn@hopkinscarley.com>%3c<mailto:chohn@hopkinscarley.com>>>>>>>

Cc: Gilly, Richard P.

[rgilly@archerlaw.com](mailto:rgilly@archerlaw.com)<<mailto:rgilly@archerlaw.com><<mailto:rgilly@archerlaw.com>%3c<mailto:rgilly@archerlaw.com>>>>>>>; Jeffrey M. Ratinoff

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Subject: RE: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)

Sensitivity: Confidential

No problem.

Kate A. Sherlock, Esq.

Archer & Greiner P.C.

One Centennial Square

Haddonfield, NJ 08033

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[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)<<mailto:ksherlock@archerlaw.com><<mailto:ksherlock@archerlaw.com>%3c<mailto:ksherlock@archerlaw.com>>>>>>>

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[[https://www.archerlaw.com/wp-content/uploads/2018/05/Archer\\_Logo\\_168x46.jpg](https://www.archerlaw.com/wp-content/uploads/2018/05/Archer_Logo_168x46.jpg)]

From: Christopher Hohn

[chohn@hopkinscarley.com](mailto:chohn@hopkinscarley.com)<<mailto:chohn@hopkinscarley.com><<mailto:chohn@hopkinscarley.com>%3c<mailto:chohn@hopkinscarley.com>>>>>>>

Sent: Tuesday, March 2, 2021 7:17 PM

To: Sherlock, Kate A.

[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)<<mailto:ksherlock@archerlaw.com><<mailto:ksherlock@archerlaw.com>%3c<mailto:ksherlock@archerlaw.com>>>>>>>

Cc: Gilly, Richard P.

[rgilly@archerlaw.com](mailto:rgilly@archerlaw.com)<<mailto:rgilly@archerlaw.com><<mailto:rgilly@archerlaw.com>%3c<mailto:rgilly@archerlaw.com>>>>>>>; Jeffrey M. Ratinoff

[jratinoff@hopkinscarley.com](mailto:jratinoff@hopkinscarley.com)<<mailto:jratinoff@hopkinscarley.com><<mailto:jratinoff@hopkinscarley.com>%3c<mailto:jratinoff@hopkinscarley.com>>>>>>>

Subject: [EXT MAIL] RE: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)

Sensitivity: Confidential

Thanks, Kate. We are free from 12:15 to 1:00 p.m. Pacific (3:15 to 4:00 p.m. Eastern). Would you mind sending a scheduler with dial-in information when you get a chance?

Best,

-Chris Hohn

From: Sherlock, Kate A.

[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)<<mailto:ksherlock@archerlaw.com><<mailto:ksherlock@archerlaw.com%3cmmailto:ksherlock@archerlaw.com>>>>

Sent: Tuesday, March 2, 2021 1:46 PM

To: Christopher Hohn

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Cc: Gilly, Richard P.

[rgilly@archerlaw.com](mailto:rgilly@archerlaw.com)<<mailto:rgilly@archerlaw.com><<mailto:rgilly@archerlaw.com%3cmmailto:rgilly@archerlaw.com>>>>; Jeffrey M. Ratnoff

[jratnoff@hopkinscarley.com](mailto:jratnoff@hopkinscarley.com)<<mailto:jratnoff@hopkinscarley.com><<mailto:jratnoff@hopkinscarley.com%3cmmailto:jratnoff@hopkinscarley.com>>>>

Subject: RE: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)

Sensitivity: Confidential

CONFIDENTIAL SETTLEMENT COMMUNICATION PURSUANT TO MUTUAL NON-DISCLOSURE AGREEMENT

Chris,

Thanks for your response. We plan to file a motion to dismiss. Are you available for a meet and confer tomorrow afternoon? We are free from 3:15 to 5:00 pm EST.

Thanks,  
Kate

Kate A. Sherlock, Esq.

Archer & Greiner P.C.  
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Haddonfield, NJ 08033  
856-673-3919

[ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)<<mailto:ksherlock@archerlaw.com><<mailto:ksherlock@archerlaw.com%3cmmailto:ksherlock@archerlaw.com>>>>

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From: Christopher Hohn

[chohn@hopkinscarley.com](mailto:chohn@hopkinscarley.com)<<mailto:chohn@hopkinscarley.com><<mailto:chohn@hopkinscarley.com%3cmmailto:chohn@hopkinscarley.com>>>>

[<chohn@hopkinscarley.com>>>>](mailto:chohn@hopkinscarley.com)

Sent: Monday, March 1, 2021 8:58 PM

To: Sherlock, Kate A.

[<ksherlock@archerlaw.com<mailto:ksherlock@archerlaw.com<mailto:ksherlock@archerlaw.com%3cmailto:ksherlock@archerlaw.com>>>>](mailto:ksherlock@archerlaw.com)

Cc: Gilly, Richard P.

[<rgilly@archerlaw.com<mailto:rgilly@archerlaw.com<mailto:rgilly@archerlaw.com%3cmailto:rgilly@archerlaw.com>>>>](mailto:rgilly@archerlaw.com); Jeffrey M. Ratinoff

[<jratinoff@hopkinscarley.com<mailto:jratinoff@hopkinscarley.com<mailto:jratinoff@hopkinscarley.com%3cmailto:jratinoff@hopkinscarley.com>>>>](mailto:jratinoff@hopkinscarley.com)

Subject: [EXT MAIL] RE: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)

Sensitivity: Confidential

CONFIDENTIAL SETTLEMENT COMMUNICATION PURSUANT TO MUTUAL NON-DISCLOSURE AGREEMENT

Hi Kate,

We apologize for the delay in getting back to you. We were not able to speak with our clients until today.

As mentioned in our last call, your clients have backtracked from their prior settlement position and they have not offered any new compromise that will move this dispute closer to settlement. Your clients have also apparently resumed selling the accused trigger products, despite Mr. Gallagher's prior representation that he would cease those sales. As you can imagine, this was not well received by Franklin.

As we previously discussed, the possibility of resolving this matter through a license is hampered by the Franklin parties' belief that the ITF Binary trigger constitutes an illegal machine gun part. The trigger also presents safety concerns, as it appears to lack any means to prevent the accidental discharge of the firearm should the user chose to switch from binary to semi-auto mode while the trigger is depressed. To date, your clients have not provided our clients with any explanation as to why Mr. Gallagher believes this is not the case.

We are open to continuing settlement discussions. However, the Franklin parties do not consider your clients' non-infringement and invalidity positions meritorious and do not wish to further delay the litigation, particularly since they first gave notice of suit 3 1/2 months ago. To the extent that you plan to file a motion to dismiss, rather than an answer, in response to the complaint, please let us know so that we can meet and confer.

Best,

-Chris Hohn

From: Sherlock, Kate A.

[<ksherlock@archerlaw.com<mailto:ksherlock@archerlaw.com<mailto:ksherlock@archerlaw.com%3cmailto:ksherlock@archerlaw.com>>>>](mailto:ksherlock@archerlaw.com)

Sent: Friday, February 26, 2021 5:42 AM

To: Jeffrey M. Ratinoff

[<jratinoff@hopkinscarley.com<mailto:jratinoff@hopkinscarley.com<mailto:jratinoff@hopkinscarley.com%3cmailto:jratinoff@hopkinscarley.com>>>>](mailto:jratinoff@hopkinscarley.com); Christopher Hohn

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Cc: Gilly, Richard P.

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Subject: RE: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)  
Sensitivity: Confidential

Chris,

I am following up on our letter dated February 22. When can we expect to receive a response from Plaintiffs?

Thanks,  
Kate

Kate A. Sherlock, Esq.

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From: Lohoefer, Terri A.

[<tlohoefer@archerlaw.com](mailto:tlohoefer@archerlaw.com)[<mailto:tlohoefer@archerlaw.com](mailto:tlohoefer@archerlaw.com)[<mailto:tlohoefer@archerlaw.com%3cmmailto:tlohoefer@archerlaw.com](mailto:tlohoefer@archerlaw.com%3cmmailto:tlohoefer@archerlaw.com)>>>

Sent: Monday, February 22, 2021 2:11 PM

To:

[jratinoff@hopkinscarley.com](mailto:jratinoff@hopkinscarley.com)[<mailto:jratinoff@hopkinscarley.com](mailto:jratinoff@hopkinscarley.com)[<mailto:jratinoff@hopkinscarley.com%3cmmailto:jratinoff@hopkinscarley.com](mailto:jratinoff@hopkinscarley.com%3cmmailto:jratinoff@hopkinscarley.com)>>>

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Cc: Gilly, Richard P.

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[<ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)[<mailto:ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com)[<mailto:ksherlock@archerlaw.com%3cmmailto:ksherlock@archerlaw.com](mailto:ksherlock@archerlaw.com%3cmmailto:ksherlock@archerlaw.com)>>>

Subject: Franklin Armory Holdings v. Robert Joseph Gallagher and In The Field Defense, E.D. Pa. Civil Action No. 2:20-cv-5681 (Our Ref.: INT169.00801)  
Sensitivity: Confidential

CONFIDENTIAL - SUBJECT TO FRE 408

Good afternoon,

The attached correspondence and its attachment are sent on behalf of Richard Gilly, Esquire.

Thank you.

Terri Lohoefer

Legal Administrative Assistant to:

BUSINESS COUNSELING, BUSINESS LITIGATION, AND PERSONAL INJURY PRACTICE GROUPS

Archer & Greiner P.C.

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Philadelphia, PA 19103

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